

Senate Bill 330 (Wright) Chapter 799*Exclusion for transfers of artwork at social gatherings*

Tax levy; effective October 10, 1999, but operative April 1, 2000. Adds Section 6010.30 to the Revenue and Taxation Code.

This bill excludes from the terms “sale” and “purchase” the transfer of original drawings, sketches, illustrations, or paintings by an artist or designer at a social gathering for entertainment purposes if all of the following requirements are met:

- **Substantially all (80 percent or more) of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to a person or persons other than the purchaser.**
- **Substantially all (80 percent or more) of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings or sketches.**
- **The charge for the drawings, sketches, illustrations or paintings is based on a preset fee.**
- **The fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of at least three drawings, sketches, illustrations or paintings to be produced by the artist or designer at the social gathering.**

Sponsor: Senator Cathie Wright

Law Prior to Amendment:

Under existing law, the sale of tangible personal property for consideration is subject to tax unless that property is specifically exempted. The sales tax is based on the total gross receipts of retailers for the sale of tangible personal property, without any deduction on account of the cost of materials used, labor, or services that are a part of the sale of the property.

The Board's Sales and Use Tax Regulation 1501, “Services Enterprises Generally,” provides that the basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the *true object of the contract*; that is, is the real object sought by the buyer the service per se or the property produced by the service. If the true object of the contract is the service per

se, the transaction is not subject to tax, even though some tangible personal property is incidentally transferred.

Comments:

1. **Purpose.** To codify a specific ruling on a case that was heard by Members of the Board of Equalization. The case involved an artist who is hired for an hourly fee by a host or hostess to draw caricatures of guests at parties. The artist receives the fee regardless of the number of guests who requested that a caricature be drawn. The Board concluded that the entertainment value the artist provides was the true object of the contract and that any artwork transferred is merely incidental.
2. **Bill has little impact on Board.** This measure will not materially impact the Board's administration of the sales and use tax program, as the provisions of this measure are consistent with the Board's interpretation of the law.